IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 12.06.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice V.DHANAPALAN

Habeas Corpus Petition No.176 of 2006

Maheswari ... Petitioner

Vs.

1. The Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-600 009.

2.The District Magistrate and District
Collector,
Namakkal District,
Namakkal. ... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records in CMP No.1/B.L./2006 (M.1) dated 13.1.2006 passed by the second respondent and quash the same as illegal and direct the respondents to produce the detenu Allimuthu, son of Muthusamy, who is now confined in the Central Prison, Salem, before this Court and set him at liberty.

For Petitioner : Mr.K.Gandhikumar
For Respondents: Mr.Babu Muthu Meeran
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.SATHASIVAM, J.)

The petitioner, who is the wife of the detenu by name Allimuthu, who was detained as a ''Bootlegger" as contemplated under the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982(Tamil Nadu Act 14 of 1982), by the impugned detention order dated 13.01.2006, challenges the same in this Petition.

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2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner, by drawing our attention to paragraph 5 of the grounds of detention submitted that though on the date of passing of the detention order the detenu has moved the bail application and the same was pending, the detaining authority has wrongly stated that the detenu has not moved any bail application, which shows non application of mind on the part of the detaining authority.

4. We verified the necessary averments in paragraph 5 in which the detaining authority, after stating that he was aware that Allimuthu was in remand from 30.12.2005 in Rasipuram PEW Crime No.345/2005, has specifically stated that " he has not moved any bail application..."

5. The learned counsel for the petitioner, by placing a copy of the order dated 18.01.2006 in CMP No.56 of 2006 on the file of Principal District Judge, Namakkal, has contended that in fact the bail application was filed even on 10.01.2006. The first paragraph of the said order amply shows that the bail application was filed by the detenu Allimuthu on 10.01.2006. It is also the claim of the petitioner that on the same day notice was taken by the Assistant Public Prosecutor and according to the counsel, necessary endorsement has been made by him in the same petition. According to him, if that is so, it is but proper on the part of the sponsoring authority to intimate the same to the detaining authority. In this case, it is not in dispute that the detention order was passed only on 13.01.2006. It is also not in dispute that the sponsoring authority, Principal District Court, Namakkal and the detaining authority are stationed in one place viz., Namakkal. In such circumstances, we are of the view that the detaining authority is not justified in making a statement that the detenu has not moved any bail application on the date of the detention order.

6. In this regard, the learned counsel for the petitioner has very much relied on the Division Bench decision of this Court dated 10.08.1999 made in HCP No.1917 of 1998. In similar circumstances, the Division Bench, accepting the stand taken by the counsel for the petitioner/detenu, after finding that the description made by the detaining authority regarding non filing of the bail application shows non application of mind on his part, quashed the detention order. The said decision is applicable to the case on hand also. Accordingly, we are satisfied that the detaining authority has not applied his mind and failed to take note of the pendency of the bail application, which was filed on 10.01.2006 well before the passing of the detention order. On this ground, the detention order is

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liable to be quashed and the same is accordingly quashed.

7. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Secretary to the Government, State of Tamil Nadu,Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2.The District Magistrate and District Collector, Namakkal District, Namakkal.

3. The Superintendent, Central Prison, Salem.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

+1cc to Mr.K.Gandhikumar, Advocate Sr 24080

AMB (CO)
km/16.6.

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